2026:AHC:126991

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8191 of 2026

Rayyan Ahmad @ Reyaan And 3 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Deeksha Gupta, Siddharth Srivastava
Counsel for Opposite Party(s)	:	Firdos Ahmad, G.A.

Court No. - 5

HON'BLE SANJIV KUMAR, J.

1. Heard Mr. Siddharth Srivastava, learned counsel for the applicants, Mr. Akhilesh Kumar Mishra, learned AGA for the State, Mr. Firdos Ahmad, learned counsel for opposite party no.2 and perused the record.

2. This application under Section 528 BNSS has been filed to quash charge-sheet dated 17.07.2025, cognizance/summoning order dated 15.12.2025 as well as entire proceedings of Case No. 3123961 of 2025 (State Vs. Ekhlakh), arising out of Case Crime No. 152 of 2025, under Sections 324(4), 352, 351(3) BNS, Police Station Devgaon, District Azamgarh.

3. Brief facts of the case are that opposite party no. 2, Afsari, lodged an FIR against the applicants, which was registered as Case Crime No. 152 of 2025, under Sections 351(3), 352, 324(4) BNS, stating therein that on 28.04.2025 at about 09:00 p.m., the applicants damaged a public drainage in front of her house and when she objected to their act, they hurled abuses and extended threats. Today again, i.e. on 05.05.2025, the applicants abused and threatened her to damage her raised platform (Chabutra) and drainage, and also extended threats of dire consequences.

4. Upon this information, FIR under Section 324(4), 352, 351(3) BNS was lodged against the applicants. After investigation charge sheet has been filed and the concerned Court has taken cognizance of the said offence and summoned the applicants.

5. Learned counsel for the applicants submits that the FIR has been lodged after eight days without any plausible explanation of delay. It is further

submitted that the witnesses are interested witnesses and their statements cannot be relied upon. It is also contended that no independent witness has been interrogated by the Investigating Officer and, in fact, the FIR has been lodged in retaliation of the multiple complaint and cases registered against the *Gram Pradhan* and his supporters by the applicants and his family.

6. It is next submitted by learned counsel for the applicants that applicant no.4 is a journalist, who played a news on social media and thus, he has been falsely implicated in the present case. The offence was not cognizable and the concerned court has wrongly taken cognizance of the offence. The cognizance and summoning order is bad in the eye of law, as the learned Magistrate has not applied his judicial mind while taking cognizance of the offence.

7. Per contra, learned counsel for opposite party no.2 has submitted that the applicants have committed the offence and the FIR was lodged on correct facts. The Investigating Officer, after collecting cogent evidence against the applicants, has filed charge-sheet in the matter. The offence is cognizable and the cognizance order is in accordance with law. Therefore, this application has no force and it is liable to be dismissed.

8. Learned AGA has supported the impugned charge-sheet, co gnizance/summoning order as well as the entire proceedings.

9. In view of submissions of both the parties and upon a perusal of material available on record, it is not in dispute that the applicants are named in the FIR and after conclusion of investigation, charge-sheet has been filed against them under Sections 324(4), 352, 351(3) BNS, whereupon the concerned c ourt has taken cognizance of the offence.

10. The first argument advanced on behalf of the applicants is that the charge-sheet was filed in a non-cognizable offences, being Sections 324(4), 352, 351(3) BNS, therefore, the cognizance and summoning order is bad because, in matters where charge-sheet has been filed in non-cognizable offence, in view of Section 2(1)(h) BNSS, the proceedings should be c onducted, as a complaint case, therefore, the cognizance and summoning order is not sustainable. It is submitted that so far as offence under Section 351(3) BNS is concerned, it is held non-cognizable by the Legislature and there is no amendment in BNSS, which would make it cognizable in the State of U.P.

11. I do not agree with this submission advanced on behalf of the applicants. There is a decision of a Division Bench of this Court passed in **Vinay Kumar Pandey Vs. State of U.P. and others in Criminal Misc. Writ**

Petition No. 13827 of 2024, dated 03.10.2024, where the same issue came up for consideration, and after discussing various decisions of the Hon'ble Supreme Court, and the High Court, it was opined that the Notification dated 31.07.1989, issued in exercise of Power under Section 10 of the Criminal Law (Amendment) Act, under the first Schedule of Cr.P.C., 1973, will be deemed to be issued for amending Schedule-I of the BNSS making Section 3 51(2) BNS (corresponding Section 506 IPC) as cognizable and non-bailable and as such Notification is already saved by Section 531(2) BNSS, which is pari materia of Section 484 of Cr.P.C. Therefore, in the State of U.P., Section 351(2) BNS would remain cognizable and non-bailable in view of Notification dated 31.07.1989, which was in force at the time of repealing the Cr.P.C. by BNSS. The relevant portion of the judgment of **Vinay Kumar Pandey** (supra) is as under:

> *9. From the perusal of Section 531(2) of B.N.S.S., it is clear that the notification issued under the Code of Criminal Procedure, 1973, which was in force immediately before commencement of B.N.S.S., shall be deemed to be issued under the corresponding provision of B.N.S.S.*
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> *10. Similarly, as per Section 8 of the General Clauses Act, 1897 on repealing a Central Act which was re-enacted, reference of repealed Act under any enactment shall be deemed to be reference to re-enacted law. Therefore, reference of I.P.C. and Cr.P.C. in Section 10 of the Criminal Law (Amendment) Act will be deemed to be reference of B.N.S. and B.N.S.S. after the repealing of I.P.C. and Cr.P.C. Therefore, if any amendment is made by the State Government in exercise of its power under Section 10 of Criminal Law (Amendment) Act in I.P.C. and Cr.P.C., then same amendment will be deemed to be made in B.N.S. and B.N.S.S. after repeal of I.P.C. and Cr.P.C.*
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> *11. The State of U.P., in exercise of its power under Section 10 of the Criminal Law (Amendment) Act, 1932 which is a central legislation, had issued notification dated 31.7.1989, amending the First Schedule of Cr.P.C. and making Section 506 I.P.C., cognizable offence if same is committed in any of the districts of the State of U.P. It is relevant to mention here that Section 10 of the Criminal Law (Amendment) Act, 1932, which is still in force, has authorized the State Government to make certain offences, including offence under Section 506 I.P.C., cognizable and non bailable. Therefore, amendment made by the State notification dated 31.7.1989 in Section 506 I.P.C., making it cognizable and non-bailable shall be deemed to be notification issued in respect of Section 351(2) B.N.S. For reference the U.P. State notification dated 31.7.1989 is being quoted as under:-*
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> > *"In exercise of the powers conferred by Section 10 of the Criminal Law Amendment Act, 1932 (Act No. XXIII of 1932) read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897) and in supersession of the notifications issued in this behalf, the Governor is pleased to declare that any offence punishable under Section 506 of the India Penal Code when committed in any district of Uttar Pradesh, shall notwithstanding anything contained in the Code of Criminal*

Procedure, 1973 (Act No. 2 of 1974) be cognizable and non-bailable."

12. The Apex Court also considered this issue in the case of Aires Rodrigues (supra) and held that the amendment made in Code of Criminal Procedure, 1998 will be deemed to be amendment made in Code of Criminal Procedure, 1973 and such amendment will be saved under Section 484 Cr.P.C., 1973. Paragraph Nos. 8 & 9 of the Aires Rodrigues (supra) is quoted as under:-

"8. Section 10 of the Criminal Law Amendment Act, 1932, under which the said Notification has been issued, is as follows:

"10. Power of State Government to make certain offences cognizable and non-bailable.?(1) The [State Government] [Substituted for "Provincial Government" by A.L.O., 1950] may, by notification in the [Official Gazette] [Substituted for "Local Gazette" by A.O., 1937] , declare that any offence punishable under Sections 186, 188, 189, 190, 228, 295-A, 298, 505, 506 or 507 of the Penal Code, 1860, when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), be cognizable, and thereupon the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.

(2) The [State Government] [Substituted for "Provincial Government" by A.L.O., 1950] may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under Section 188 or Section 506 of the Penal Code, 1860 shall be non-bailable."

There is no dispute that the 1932 Act is a Central legislation and even today it is operative and power conferred under Section 10 can be exercised.

9. In these circumstances, merely because the 1898 Code has been repealed and replaced by the 1973 CrPC, could not affect the situation. Section 484 CrPC, 1973 as well as Section 8(1) of the General Clauses Act, 1897 saved a notification which may have been issued under CrPC of 1898. Section 8 of the General Clauses Act is as follows:
"8. Construction of references to repealed enactments. (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.
(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed

shall, unless a different intention appears, be construed as references to the provision so re-enacted.

In these circumstances, we are unable to sustain the view taken in the impugned orders."

13. This issue again came into consideration in a full Bench judgement of Allahabad High Court in the case of Mata Sevak Upadhyay vs. State of U.P.; Criminal Misc. Writ Petition No. 7215 of 1994, decided on 8.9.1995. In that case the full Bench held that Section 10 of the Criminal Law (Amendment) Act is valid and the State Government notification dated 31.7.1989, making Section 506 I.P.C. cognizable and non-bailable in exercise of power under Section 10 of the Criminal Law (Amendment) Act, is also valid. In this case, the full Bench has relied upon the judgement of the Apex Court in the case of Arnold Rodricks and another vs. State of Maharashtra and others; AIR 1966 SC 1788 as well as a Division Bench judgement of the Gujarat High Court in the case of Vinod Rao vs. State of Gujarat; 1980 SCC OnLine Guj 86 and observed in paragraphs No. 108, 109, 110 of Mata Sevak Upadhyay (supra) are quoted as under:-

"108. From this authority, it follows that to maintain the rule of flexibility, which is utmost necessary to run the administration, delegation of some powers, which are not essentially legislative in nature, is necessary. Legislature cannot sit every time to make law to cover all situation arising time to time, and, therefore, after the essential legislative policy having been laid down, the Legislature can leave to the State Government to make necessary changed in the interest of smooth administration. The Legislature has made offence under Section 506, IPC, and has also laid down the essential procedure for trial thereof. So far as the cognizability or bailability of that offence is concerned, the State Government is empowered to change the schedule under Section 10 of the Act of 1932 to make the offence cognisable or non-bailable depending on the exigencies of the administration. In view of the rule laid down in Arnold Rodrick's (supra), the power conferred on the State Government to amend the schedule to the CrPC is permissible. What is amended is not the offence which is declared by the Legislature in the exercise of essential legislative power. Amendment by virture of Section 13 is such which does not override the essential legislative power.

109. For the reasons Section 10 of the Act of 1932 as well as the notification of August 2, 1989, both the held valid.

110. In the premises, Sections 3, 4, 7, 8 and 14 of the Act of 1989 and Section 10 of the Act of 1932 and notification No. 777/VIII-9-4 (2) (87), dated July 31, 1989, published in the U. P. Gazette (Extraordinary) Part IV, Section Kha, dated 2nd August, 1989, are held valid."

14. Code of Criminal Procedure comes in the List-III (concurrent list). Therefore, the parliament as well as State Legislature can amend the same in view of the Article 246(2) of the Constitution of India which is quoted as under:-

> *"Article 246(2)- Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the ?Concurrent List)."*

15. However, in case there is repugnancy between the laws, made by the Parliament and the State Legislature then such law made by the State Legislature shall be reserved for consideration of the President and will prevail in the State only after getting the assent of the President in view of the Article 254(2) of the Constitution of India which is quoted as under:-

> *"Article 254(2)- Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*
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> *Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."*

16. Though the Cr.P.C. is enacted by the Parliament, which made Section 506 I.P.C. as non-cognizable, but the State by its notification dated 31.7.1989, made it a cognizable offence. In normal circumstances, the matter would have been sent for consideration of the President and only after receiving the assent of the President, the amendment made by the State would prevail in the State. However, the Criminal Law (Amendment) Act, 1932 is a central act and this Act itself authorizes the State Government to make Section 506 I.P.C. as cognizable offence in the First Schedule of the Code of Criminal Procedure. Therefore, there is no requirement for seeking assent of the President of India for prevailing the same in the State.

17. This issue was also considered by the Apex Court in the case of Harishankar Bagla and another vs. State of Madhya Pradesh; (1954) 1 SCC 978. In this case, the issue was if the Act of the Parliament itself permits to issue an order with an effect of amending the central Act, then this amendment will not be deemed to be made by the State Government but the same is the legislated declaration of the central Act. This amendment will have effect notwithstanding any inconsistency therewith contained in any other enactment other than this Act. Paragraph No.21 of Harishankar Bagla (supra) is quoted as under:-

> *"21. Conceding, however, for the sake of argument that to the extent of a repugnancy between an order made under Section 3 and the provisions of an existing law, to the extent of the repugnancy, the existing law stands repealed by implication, it seems to us that the repeal is not by any act of the delegate, but the repeal is by the legislative act of Parliament itself. By enacting Section 6 Parliament itself has declared that an order made under Section 3 shall have*

> *effect notwithstanding any inconsistency in this order with any enactment other than this Act. This is not a declaration made by the delegate but the legislature itself has declared its will that way in Section 6. The abrogation or the implied repeal is by force of the legislative declaration contained in Section 6 and is not by force of the order made by the delegate under Section 3. The power of the delegate is only to make an order under Section 3. Once the delegate has made that order its power is exhausted. Section 6 then steps in wherein Parliament has declared that as soon as such an order comes into being that will have effect notwithstanding any inconsistency therewith contained in any enactment other than this Act. Parliament being supreme, it certainly could make a law abrogating or repealing by implication provisions of any pre-existing law and no exception could be taken on the ground of excessive delegation to the act of Parliament itself. There is no delegation involved in the provisions of Section 6 at all and that section could not be held to be unconstitutional on that ground."*
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> *18. Therefore, in view of the law laid down by the Apex Court in the case of Hari Shankar Bagla (supra), even the central Act can be amended by the State in exercise of power under Section 10 of the Criminal Law (Amendment) Act, which itself is a central legislation and in case of inconsistency, assent of the President is not required in such notification.*
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> *19. From the above analysis, it is clear that the notification dated 31.7.1989, issued in exercise of power under Section 10 of the Criminal Law (Amendment) Act under the first Schedule of Cr.P.C., 1973, will be deemed to be issued for amending schedule-I of the B.N.S.S. making Section 351(2) B.N.S. (corresponding Section 506 I.P.C.) as cognizable and non bailable and such notification is already saved by Section 531(2) B.N.S.S. which is pari material of Section 484 of Cr.P.C., 1973. Therefore, in the State of U.P., Section 351(2) B.N.S. will remain cognizable and non bailable in view of the notification dated 31.7.1989 which was in force at the time of repealing the Cr.P.C. by B.N.S.S.*

12. In view of the above discussion, and the decision in **Vinay Kumar Pandey** (supra) offence under Section 351(3) BNS is cognizable and non-bailable in the State of U.P., therefore, learned Magistrate has not committed any material illegality or irregularity in proceeding the case as a State case, while taking cognizance of the offence.

13. It is also submitted that there is no medial report with regard to the alleged hurt, which prima facie shows that the FIR has been lodged on false and concocted facts. I again do not agree with this submission of learned counsel for the applicants, as whether the injured was medically examined or not and what would be the effect, if there is no medical report, is a matter of evidence, which cannot be decided in this proceedings at this stage.

14. It is also submitted by learned counsel for applicants that there is a delay of eight days in lodging of the FIR, which makes the prosecution case

doubtful. It is also submitted that there is no independent witness of the alleged incident, as such, the prosecution case is not reliable. It is also submitted that this a case of counterblast, therefore, the proceedings are not sustainable.

15. All these issues require examination and appreciation of evidence, which is not permissible in the present proceedings, as it would amount to conducting a mini trial. Such matters fall within the exclusive domain of the Trial Court and can be adjudicated only after a full-fledged trial, based on evidence led by the parties.

16. In view of the foregoing discussion, no good ground is made out to interfere with the criminal proceedings pending before the Trial Court. Therefore, this application lacks merit and it is, accordingly, **dismissed**.

June 12, 2026
Subham

(Sanjiv Kumar,J.)

Digitally signed by :-
SUBHAM KUSHWAHA
High Court of Judicature at Allahabad